

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HALIL v. BULGARIA

(Application no. 40029/19)

JUDGMENT

STRASBOURG

6 December 2022

This judgment is final but it may be subject to editorial revision.



In the case of Halil v. Bulgaria,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Pere Pastor Vilanova, *President*,
Georgios A. Serghides,
Yonko Grozev, *judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 40029/19) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 20 July 2019 by a Bulgarian national, Mr Enhyur Ahmed Halil, born in 1953 and living in Dobrich ("the applicant"), and who was represented by Ms A. Chobanova, a lawyer practising in Sofia;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms M. Ilcheva, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 15 November 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The application concerns the delayed provision of compensation to the applicant for his property which was expropriated for urban development in 1983 by the municipal authorities of Dobrich. The applicant was to be compensated with a flat in a building the authorities intended to construct. Construction work commenced in 2010; however, in 2014 this was postponed, apparently mainly due to financial difficulties experienced by the municipality. In November 2019 the construction work was resumed and, according to the latest information submitted by the Government, the building was expected to be completed by 30 November 2022. The applicant had not received his flat or any alternative compensation by the time the parties filed their latest submissions with the Court in September 2022.

2. On 31 August 2020 the applicant brought a tort action under the State and Municipalities Responsibility for Damage Act 1988 (hereinafter "the 1988 Act"), seeking compensation for the delay in providing the flat due to him for the period from 1 September 2015 to 1 September 2020. In a final judgment of 20 December 2021 the Supreme Administrative Court (hereinafter "the SAC") held that the municipality was responsible for the failure to deliver the flat within a reasonable time, and awarded the applicant 18,280 Bulgarian levs (BGN) (9,346 euros (EUR)) in pecuniary damage and BGN 3,000 (EUR 1,534) in non-pecuniary damage. These sums were paid to the applicant on 20 January 2022.

3. The applicant complains under Article 1 of Protocol No. 1 and Article 13 of the Convention of the delays in the compensation procedure.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

4. The Court is of the view that it suffices to examine the complaints solely under Article 1 of Protocol No. 1 (see, for example, *Kopankovi v. Bulgaria*, no. 48929/12, §§ 26-27, 6 September 2018).

5. The case is of the type examined in *Kirilova and Others v. Bulgaria* (nos. 42908/98 and 3 others, 9 June 2005), and many follow-up cases (some of which are cited below).

A. Admissibility

6. The Government argued that the applicant had failed to exhaust available and effective domestic remedies. In particular, since the applicant had initiated a tort action under the 1988 Act only after the submission of his application to the Court (see paragraph 2 above), he had not exhausted that remedy at the relevant time and his application had been submitted prematurely. In addition, the applicant should have lodged a further claim for the period after 20 January 2022, when he had received the compensation awarded to him by the SAC (ibid.).

7. The applicant contested the effectiveness of a tort action under the 1988 Act, arguing that such a claim only resulted in an award of compensation for the five years preceding the date of its submission, in view of the relevant domestic rules on limitation periods.

8. While it takes note of the recent domestic case-law awarding damages to plaintiffs in tort proceedings under the 1988 Act, as presented by the Government, the Court reiterates that a tort claim cannot directly compel the authorities to build and deliver the flat; it only results in providing compensation for a limited period of time, as happened in the present case (see paragraph 2 above). The applicant should not be expected to periodically lodge new actions and seek further compensation, since he cannot predict when the authorities will fulfil their obligation to build and deliver his flat (see *Kirilova and Others*, cited above, §§ 116- 119; *Antonovi v. Bulgaria*, no. 20827/02, §§ 24, 1 October 2009). In view of the considerations above and the fact that the proceedings brought by the applicant in the present case have been completed (see paragraph 2 above), the previous pendency of these proceedings cannot lead to the conclusion that the application was premature. While, therefore, the Government's objections in that respect are to be dismissed, the fact that the applicant has already received partial

compensation at the domestic level is to be of relevance for the award of just satisfaction under Article 41 of the Convention (see paragraph 23 below; also *Kirilova and Others*, cited above, § 119).

9. The Government considered also that the applicant had lost his victim status, as in the domestic tort proceedings he had received full and express acknowledgment of the violation of his rights, as well as an appropriate monetary redress.

10. However, the applicant has not yet received his flat, and the compensation awarded to him by the SAC, accompanied by a recognition of the breach of his rights, only concerned the delay for the period between 2015 and 2020 (see paragraph 2 above). The present complaint covers a much longer time-frame (see paragraph 14 below). Accordingly, the applicant has not ceased to be a victim of the alleged violation (see *Antonovi*, cited above, § 23).

11. The Government further claimed that the applicant had abused his right to individual application. Firstly, he had failed to inform the Court that he had initiated a tort claim under the 1988 Act. Secondly, his representative had breached the confidentiality of the friendly-settlement negotiations during a public hearing held on 1 November 2021 before the SAC, where she had said that she expected the application to be communicated and the parties to start such negotiations.

12. The Court considers that, in view of its findings above (see paragraph 8), the proceedings under the 1988 Act do not relate sufficiently to the core issue at stake, and therefore informing the Court about the initiation of such proceedings cannot be deemed to be essential for the outcome of the application (see, *mutatis mutandis*, *Anatoliy Marinov v. Bulgaria*, no. 26081/17, §§ 30-32, 15 February 2022). Likewise, there has been no breach of the duty of confidentiality of friendly-settlement negotiations, seeing that at the time of the court hearing of 1 November 2021 the Court had not yet given notice of the application to the Government and had not sent to the parties draft declarations setting out a friendly-settlement proposal (this happened in December 2021).

13. Finally, the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, and must be declared admissible.

B. Merits

14. The applicant's entitlement to be provided with a flat as compensation for his expropriated property arose in 1983, and he has not yet received his flat, or any alternative compensation (see paragraph 1 above). Thus, in the present case the delay is thirty years (from the entry into force of Protocol No. 1 to the Convention for Bulgaria in 1992 onwards).

15. The applicant argued that the domestic authorities were entirely responsible for the excessive delays in providing compensation, regardless of whether that was due to financial difficulties experienced by the municipality, or to negligence or a passive attitude on their part.

16. The Government maintained that the domestic authorities had made active attempts to overcome financial and logistical difficulties, in order to find a solution and fulfil their obligation to provide a flat to the applicant. They contended that the municipality's financial situation had caused some delay in the compensation procedure, however, the difficulties had been largely overcome, the applicant had been awarded sufficient redress at domestic level for that delay, and he was to receive his flat by the end of November 2022. In the Government's view, the applicant was responsible for part of the delay incurred, because he had failed to resort to procedures available to him to bring about the conclusion of the procedure at an earlier date. In particular, the applicant had not used the possibility provided for under domestic law to request financial compensation in lieu of compensation in the form of a flat, nor had he availed himself of the possibility to seek re-compensation by way of another flat (see, for a description of these procedures, *Kopankovi*, cited above § 22, and *Velyov and Dimitrov v. Bulgaria* (dec.) [Committee], no. 64570/10, § 16, 20 September 2016).

17. The Dobrich municipality never abandoned its plans to construct the building where the applicant's flat is located and actively sought financing in order to complete the construction, as noted by the Government. Consequently, the applicant should not be criticised for his decision to await that construction and not seek alternative solutions, such as financial compensation or compensation through other property (compare the circumstances in *Basmenkova v. Bulgaria* [Committee], no. 63391/13, §§ 28-30, 6 April 2017; by contrast, see *Bozhilovi v. Bulgaria* [Committee], no. 9051/18, §§ 9-11, 15 March 2022 and *Petrovi v. Bulgaria* [Committee], no. 26759/12, §§ 25-29, 2 February 2017, where the Court found that at some point it had become clear that the property initially due would never be delivered which meant that the applicants should have resorted to the various other means of redress available under domestic law). Therefore, the applicant's failure to pursue those avenues cannot lead to the conclusion that he is to blame for some part of the delay in the compensation procedure.

18. As to the authorities, in the present case it does not appear that they proved reluctant to assist the applicant, nor that they actively opposed his attempts to receive the flat due to him (by contrast, see *Kirilova and Others*, cited above, § 121; and *Dobrodolska v. Bulgaria* [Committee], no. 34272/09, § 20, 13 October 2016). Nevertheless, the delay caused through their fault has not been validly justified. In particular, in so far as the Government referred to the insufficient financial resources of the Dobrich municipality, the Court reiterates that this in itself cannot justify such a lengthy delay (see *Kirilova and Others*, cited above, § 122). Furthermore, even assuming that the

applicant will receive the flat due to him in November 2022 (see paragraph 1 above), which has not yet happened, the fact remains that for many years the applicant faced uncertainty and has had to suffer an excessive burden. Thus, even after the possible incoming delivery of the flat, the fair balance required under Article 1 of Protocol No. 1 will not be achieved (see *Kirilova and Others*, cited above, § 123).

19. There has accordingly been a violation of Article 1 of Protocol No. 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed non-pecuniary damage, without indicating a specific amount.

21. As for costs and expenses, he claimed 1,775 euros (EUR). This included EUR 1,625 for legal representation and EUR 150 for translation. To support his claim, he presented a time sheet for the work performed by his lawyer and receipts for the amount paid for translation. He requested that EUR 415 awarded under this head be paid to his bank account and that the remainder be transferred directly to the bank account of his legal representative.

22. The Government submitted that the claim was inadmissible due to the applicant's failure to adduce any arguments thereof. They contested the applicant's claim for costs and expenses and considered it excessive.

23. The Court, ruling on an equitable basis and having regard to the fact that the applicant has received partial compensation at the domestic level (see paragraph 2 above), finds it appropriate to award him EUR 1,500 in respect of non-pecuniary damage.

24. Furthermore, having regard to the fact that the present case concerns a repetitive complaint and that it is part of a group of ten almost identical applications submitted to the Court by applicants represented by the same lawyer, the Court considers it reasonable to award the applicant a global amount of EUR 900 to cover all costs incurred, plus any tax that may be chargeable to him. It holds that, as requested by the applicant, EUR 485 of this amount is to be paid directly into the bank account of his legal representative.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention.

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 900 (nine hundred euros), plus any tax that may be chargeable, in respect of costs and expenses, EUR 485 (four hundred and eighty-five euros) of which to be paid directly into the bank account of his legal representative;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President